

On strengthening trust and integrity in online giving platforms

To the Productivity Commission,

Thank you for the opportunity to respond to the draft report on philanthropy, which contains many commendable proposals.

My submission will be limited to responding to a single information request, specifically 7.2.

I hope it may prove useful and wish you the very best in completing this timely inquiry.

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Information request 7.2

Regulation to strengthen donor protection through online giving platforms

Online giving platforms have changed how people donate and can create new risks and challenges for donors and charities. The Commission is seeking further information and evidence on the costs, benefits and need for changes to regulation of online giving platforms, for example requiring:

- *a regulator to be notified of fundraising appeals once a certain threshold of donations is met*
- *online giving platforms to make reasonable efforts to notify a charity of appeals being conducted in their name*
- *online giving platforms or a regulator to halt a fundraising appeal being conducted in the name of a registered charity upon that charity's request.*

While equity-based crowdfunding is regulated by ASIC under the *Corporations Act 2001* – specifically the *Corporations Amendment (Crowd-sourced Funding) Act 2017* – I am not aware of any specific regulation expressly addressing *donation*-based crowdfunding. Instead, donation-based – or perhaps what could be alternatively described as ‘benevolent’ crowdfunding – falls under each state and territory’s fundraising laws (among other legislation, such as consumer protection laws). With perhaps little else they can proactively do, the ACNC urges designated Responsible Persons within charities to exercise due diligence when turning to crowdfunding platforms, along with urging caution among donors to ensure the legitimacy of any campaigns seeking contributions.¹ While well-meaning and undertaken in good faith, some crowdfunding campaigns are established hastily, do not contain clearly stated purposes and specific intended beneficiaries, are unprepared for unexpected outcomes (e.g. what to do with surplus funds), and are managed by organisers with little knowledge of their formal obligations.

Though rare, tensions can also emerge when individuals use crowdfunding platforms to fundraise for a registered charity without their knowledge or consent. As noted in the Commission’s draft report, cases like Celeste Barber’s fundraiser for the NSW RFS highlight the potential unintended consequences of knowledge gaps among both fundraisers and donors (compounded by a lack of

¹ ACNC, 2023, ‘Information about crowdfunding for charities and donors’
<https://www.acnc.gov.au/tools/guides/crowdfunding-and-charities>

timely intervention by other stakeholders). Such outcomes can result in the inefficient disbursement of funds in ways that do not align with donor intentions, and thus significantly undermine confidence and enthusiasm for otherwise immensely praiseworthy efforts. Online giving will prove crucial in fostering greater giving among Australians, and thus any communication failures or administrative missteps that result in a divergence between donor intent and actual outcomes must be mitigated.

Peer-to-peer fundraising platforms offer user-friendly affordances and an immediacy of action that strongly appeals to potential donors. This is particularly noticeable during disasters, where donors seek options to rapidly remedy urgent needs.²³ However, while often achieving wondrous outcomes, this rapid conversion of donation-to-action can create potential risks. One noteworthy example was the Northern Rivers flooding in NSW during 2022, during which a campaign was established on MyCause to raise funds to support private citizens who were conducting rescues by helicopter. Approximately \$80,000 was raised and around 60-70 people were rescued.⁴ Such efforts are obviously highly commendable, demonstrating a necessary resourcefulness amid extraordinarily difficult circumstances. However, they also reflect a curious disintermediation not of charities, but of *the state*. Typically, rescue operations of this kind would be a duty almost exclusively conducted by state agencies. However, in desperate times the immediacy of crowdfunding enabled private citizens to undertake this work. I certainly don't want to discourage such well-intended ingenuity, but I am concerned about the potentially complicated liabilities and long-term implications of such practices becoming normalised and relied upon in disaster responses.

Alternatively, crowdfunding in the wake of disasters has also resulted in odd instances where the state has arguably disintermediated both charities *and* itself. In response to the 2022 floods in Southeast Queensland, Peter Dutton – at the time the Minister for Defence – established a GoFundMe campaign raising funds for affected persons in his electorate. Though it eventually raised almost \$30,000, the campaign was widely derided as an inappropriate use of Dutton's time and resources, and unbecoming for a Federal Minister to pass the (virtual) cap around rather than wholly focussing their attention on enacting state-issued relief.⁵ Moreover, Dutton tasked the 'Dickson Seniors Council' with disbursing the funds. This group, with whom Dutton has close ties, is a self-proclaimed not-for-profit, but remains unregistered as a charity and instead seemingly has a primary purpose of promoting local businesses.⁶ Such practices are therefore risky, given the lack of transparency, accountability, and clear delineation of responsibility. As a basic precautionary response, instituting reporting thresholds for crowdfunding campaigns that have raised substantial funds would enable regulators like the ACNC to intervene, even if only in an advisory capacity.

Such advice from the regulator might include basic assistance in establishing clear plans for the disbursement of funds. A regular occurrence in crowdfunding, particularly in campaigns (a) for rapidly evolving social movements (e.g. occupation-based protests), (b) disaster response, or (c) which grossly exceed their initial fundraising targets is intense public debate over the appropriate

² Behl, A. and Dutta, P., 2020. Social and financial aid for disaster relief operations using CSR and crowdfunding: Moderating effect of information quality. *Benchmarking: An International Journal*, 27(2), pp.732-759.

³ Williamson, A., Leat, D. & S. Phillips (eds.). 2023. *Philanthropic Response to Disasters: Gifts, Givers and Consequences*, Bristol University Press

⁴ MyCause. 2022. Personal communication.

⁵ Martin, S. 2022. "Isn't this the role of government?": Peter Dutton panned for setting up fundraiser for flood victims', *The Guardian*. <https://www.theguardian.com/australia-news/2022/feb/27/isnt-this-the-role-of-government-peter-dutton-panned-for-setting-up-fundraiser-for-flood-victims>

⁶ Dennien, M. 2022. 'Dutton flood funds flow to unregistered group with links to office'. *Brisbane Times*. <https://www.brisbanetimes.com.au/national/queensland/dutton-flood-funds-flow-to-unregistered-group-with-links-to-office-20220325-p5a7xt.html>

distribution of funds. One example of this was the response to the 2017 Las Vegas mass shooting, in which 58 people were killed and hundreds severely injured. A GoFundMe campaign was established by the Clark County Commissioner, Steve Sisolak, which attracted substantial donations and eventually resulted in a \$USD31.5m victims' fund.⁷ Though administered with care and diligence, town hall meetings on the fairest rationales for distributing the funds among the victims and their families caused injurious debates over comparisons of 'deservingness', particularly given it was ultimately a small pool of funds to address the scale of suffering incurred.⁸ Moreover, some impacted persons had established crowdfunding campaigns of their own – with highly varied results – thus skewing the intended equitable distribution of aid. Such adverse outcomes could easily occur in Australia, but can be mitigated with reporting thresholds, timely advice, and clearer distribution plans.

Greater collaboration between crowdfunding platforms and registered charities can also significantly help in this regard. In part, such partnerships can mitigate against extreme variability in fundraising outcomes i.e. where certain appeals attract mass public attention and subsequent contributions (in some cases greatly exceeding what may be necessary), while comparable appeals languish in obscurity. Indeed, companies like GoFundMe are increasingly aware of the reputational risks resulting from these skewed outcomes.⁹ Similarly, partnering more with charities would reduce risks associated with a lack of knowledge and expertise among individuals turning to charitable crowdfunding in one-off instances (such as in the case of Celeste Barber). Crowdfunding platforms should therefore be encouraged and supported in such efforts to work closely with charities. With this in mind, I would urge the Commission to consult with MyCause and Chuffed, both Australia-based crowdfunding platforms who likely have pertinent insights to share (among crowdfunding platforms, only GoFundMe are cited in the draft report). I suspect both MyCause and Chuffed have a higher proportion of appeals established to benefit registered charities than GoFundMe and are far more engaged in working with Australian charities.

The Commission has requested information on the relative costs and benefits of requiring online giving platforms to notify a regulator once a certain threshold of donations is met in fundraising appeals. It's a pertinent question, as the risks in online giving extend well beyond donors and charities. In a recent study my collaborators and I explored current challenges faced by crowdfunding platforms in seeking to avoid complicity with divisive, hate-based, incendiary, or even outright violent causes.¹⁰ It is one thing for a digital platform to enable the *expression* of potentially harmful ideas, but quite another to materially support their *enaction* through the free provision of fundraising tools. Online peer-to-peer giving platforms must therefore balance tensions between *legitimacy* and *complicity*, i.e. the desire to remain relatively 'open' and 'neutral' platforms, while avoiding implication in significant harms.

⁷ Sanchez, L. 2018. 'GoFundMe campaign gives \$275K to every Vegas shooting victim's family'. *The Hill*. <https://thehill.com/homenews/news/376589-gofundme-campaign-gives-275k-to-every-vegas-shooting-victims-family/>

⁸ Suter, L. 2017. Sisters who survived Las Vegas shooting say they won't get help from \$11M fund due to proposed rules. *ABC13 NEWS*. <https://abc13.com/las-vegas-mass-shooting-massacre-victims-fund-gofundme-11-million/2717363/>

⁹ Wade, M., 2023. 'The giving layer of the internet': A critical history of GoFundMe's reputation management, platform governance, and communication strategies in capturing peer-to-peer and charitable giving markets. *Journal of Philanthropy and Marketing*

¹⁰ Wade, M., Baker, S.A. & Walsh, M.J., 2023. Crowdfunding platforms as conduits for ideological struggle and extremism: On the need for greater regulation and digital constitutionalism. *Policy & Internet*.

Such tensions became starkly apparent during the 2022 ‘Freedom Convoy’ occupation in Ottawa, which brought a significant section of the Canadian capital to a standstill for almost a month. The occupation was ostensibly to protest against COVID-19 vaccine mandates, but quickly spiralled into a far more radical threat and combusive atmosphere that invited comparisons with the January 6 Capitol insurrection. The occupation was supported by crowdfunding, initially on GoFundMe and later on GiveSendGo. Over \$CAD10m was raised before GoFundMe – on the advice of authorities and wary of complicity in potentially catastrophic harms – cancelled the campaign and refunded all donations. In response, GiveSendGo, a Christian crowdfunding platform that prides itself on staunchly defending individual liberty and free speech, quickly approved and promoted a new Freedom Convoy fundraising campaign, raising more than \$CAD16m before the Canadian Government invoked never before used emergency powers to halt the campaign and seize the funds. Fundraising to support the Freedom Convoy was also pursued via cryptocurrencies, and a significant proportion of these funds ultimately evaded seizure.

It is easily forgotten that Australia had its own ‘Convoy to Canberra’ that was inspired by the events in Ottawa, which culminated in 10,000 protestors converging on Parliament House and Old Parliament House. GoFundMe hosted a campaign in support of the convoy, which raised \$179,000 in less than two weeks and was cancelled only after its designated organiser, James Greer, was charged by police after being found in possession of an illegal firearm and ammunition. This provided sufficient grounds for GoFundMe to cancel the campaign under their terms of service. It remains unclear what measures would have been taken had this not occurred, and to what ends the funds would have been used. Though likely not yet occurring at a significant scale, fundraising in service of domestic extremism remains a serious and ongoing threat in Australia.¹¹

GiveSendGo are attempting to gain traction in the Australian crowdfunding market, sponsoring and speaking at events like CPAC Australia (a conservative activists conference). GiveSendGo are also currently hosting a campaign for Australian neo-Nazi Thomas Sewell, who is seeking to build a ‘White Australian Community’.¹² It is extremely unlikely that any other crowdfunding platform currently operating in Australia would host this campaign, which indicates the threat that GiveSendGo may pose in normalising and aiding extremist views. When pressed on whether he would permit the Ku Klux Klan to use GiveSendGo, co-founder Jacob Wells stated ‘... if what they’re doing is within the law, I would consider it an honor to have them use the platform and share the hope of Jesus with them.’¹³ In a Canadian parliamentary inquiry Wells reiterated their dogmatic stance, stating that ‘We believe, completely to the core of our being, that the danger of the suppression of speech is much more dangerous than speech itself’.¹⁴ There is little need to belabour the obvious response that defending ‘free speech’ does not obligate one to give it a platform and free fundraising tools. Instead, we may simply conclude that while reporting obligations should not be onerous, online giving platforms *cannot* be left wholly to their own devices in determining whether fundraising campaigns that attract substantial contributions are permissible.

¹¹ Bogle, A. 2021. Policy Brief: Buying and selling extremism: new funding opportunities in the right-wing extremist online ecosystem. *Australian Strategic Policy Institute*

¹² Sewell, T. 2023. ‘Help build a White Australian Community’, *GiveSendGo*, <https://www.givesendgo.com/WhiteAustralianCommunity>

¹³ Lavin, T. 2021. ‘Crowdfunding Hate in the Name of Christ’. *The Nation*. <https://www.thenation.com/article/society/givesendgo-crowdfunding-extremism/>

¹⁴ SECU. 2022. Evidence/Standing committee on public safety and national security. *House of Commons, Parliament of Canada*. <https://www.ourcommons.ca/DocumentViewer/en/44-1/SECU/meeting-12/evidence>

The legitimacy of the emergency intervention in Ottawa remains contested, and its use reflected a lack of alternative options due to inadequate regulatory mechanisms to contend with these relatively new threats. Domestic Financial Intelligence Units (FIUs) are crucial in preventing money laundering, terrorist financing, and similar risks relating to financial transactions.¹⁵ Typically, reporting entities—such as banks and other financial services companies—are required to report transactions that meet specified thresholds to FIUs. However, peer-to-peer fundraising entities have largely been excluded from the remit of domestic FIUs, despite their clear potential for financing dangerous activities. Given this ‘legislative gap’, Canadian deputy prime minister Chrystia Freeland admitted that Canada's domestic FIU, FINTRAC, had methods and a mandate ‘appropriate for a 20th-century economy, but not for a 21st-century economy’.¹⁶

Though Australia’s domestic FIU, AUSTRAC, have been conscious of the threat of crowdfunding being exploited for criminal or otherwise dangerous purposes since at least 2016¹⁷ – and the threat in Australia arguably remains comparatively low – it would nonetheless be prudent to consider precautionary measures. Domestic FIUs like AUSTRAC that do not include peer-to-peer fundraising platforms in their remit should therefore urgently consider expanding their scope, mandating reporting obligations to ensure timely identification of anomalous and suspicious fundraising campaigns. Similarly, more clarity may be needed on the obligations crowdfunding platforms must uphold in verifying identities (i.e. ‘Know your customer’ expectations) and maintaining client records. Beyond this, as noted earlier it is worthwhile considering methods to more clearly delineate respective obligations for intermediaries and beneficiaries to agree upon a detailed distribution plan for funds raised. This is particularly necessary and urgent in cases where significant funds are raised for a social cause (rather than, say, a personal ailment) but are *not* given to a registered charity. GoFundMe, understandably concerned about complicity in potentially catastrophic harms, attempted to do this during the Freedom Convoy in Ottawa, compelling the organisers to provide a plan for the funds before permitting the release of an initial \$CAD1m. However, once the funds were released GoFundMe had little means to hold the beneficiaries to account.

It would appear that crowdfunding platforms are included as a designated service in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Section 6, Table 1, Item 32A). However, in practice, I am uncertain as to what specific obligations are placed upon such platforms by AUSTRAC. Among the types of industry monitored by AUSTRAC remittance services are perhaps the most analogous to crowdfunding, and thus comparable requirements could be mandated (e.g. requiring online giving platforms to develop an approved Anti-Money Laundering and Counter-Terrorism Financing (AML/CTF) program, submit threshold transaction reports (TTR) for transfers of A\$10,000 or more, and international funds transfer instruction reports (IFTIs)). Such obligations would likely not prove onerous for crowdfunding platforms, given the rarity of campaigns that actually reach such thresholds. However, consultation with online giving platforms should be sought to ensure any increased reporting obligations will prove feasible. In any cases reported to AUSTRAC where a

¹⁵ Davis, J. 2020. Prevention of terrorist financing. In A. P. Schmid (Ed.), *Handbook of terrorism prevention and preparedness* (pp. 444–473). *International Centre for Counter-Terrorism*

¹⁶ Rouleau, P. 2023. Report of the public inquiry into the 2022 public order emergency – Volume 1: Overview. *Public Order Emergency Commission*. <https://publicorderemergencycommission.ca/files/documents/Final-Report/Vol-1-Report-of-the-Public-Inquiry-into-the-2022-Public-Order-Emergency.pdf>

¹⁷ AUSTRAC. 2016. *Terrorism Financing South-East Asia & Australia: Regional Risk Assessment 2016*. Commonwealth of Australia. https://www.austrac.gov.au/sites/default/files/2019-07/regional-risk-assessment-SMALL_0.pdf

charitable entity may be involved the ACNC should be consulted accordingly, but primary responsibility must ultimately lie with AUSTRAC (along with the reporting entities themselves).

The Freedom Convoy in Ottawa demonstrated that allowing crowdfunding platforms to do their own internal auditing and risk assessments of politically contentious campaigns raising substantial war chests is hopelessly inadequate. GoFundMe were aware of and monitoring the Freedom Convoy fundraiser within hours of its creation, almost two weeks before the first significant arrivals in Ottawa.¹⁸ However, by drawing only on their own resources they were not able to perceive the genuine threat the campaign posed. Earlier reporting to intelligence agencies may have enabled a brief window of opportunity to intervene before the occupation gathered unstoppable momentum. Though currently unlikely, such threats are far from inconceivable in Australia.

Finally, some quick closing thoughts. The Commission has asked about the feasibility of tasking *'online giving platforms to make reasonable efforts to notify a charity of appeals being conducted in their name'*. I believe this is feasible and prudent, but would suggest a minimum threshold of funds raised be set to ensure it does not prove onerous. The vast majority of crowdfunding campaigns raise very little, and in such instances it is unlikely that a charity may be incurring more than a negligible reputational harm from any unwanted appeal made on their behalf.

As to whether we should task *'online giving platforms or a regulator to halt a fundraising appeal being conducted in the name of a registered charity upon that charity's request'*, I would express more hesitancy. While charities *must* remain free and empowered to reject donations – contrary to the views of the Chair of the UK's Charity Commission¹⁹ – I am wary about taking this a step further to allow charities to expressly forbid a person from fundraising for them. This would be a heavy-handed response and obscures the fact that crowdfunding platforms can serve purposes beyond fundraising, including as a vehicle for forms of political expression and advocacy that should be protected. As an illustrative example, in 2021 the far-right British broadcaster and former politician Nigel Farage criticised the Royal National Lifeboat Institution (RNLI) – a charity dedicated to saving lives at sea – describing it as a 'taxi service for illegal immigration'. In response, a GoFundMe campaign was established to raise funds to purchase a new hovercraft for the RNLI, which would be christened 'The Flying Farage' (though the organiser noted that ultimately the RNLI themselves would decide upon the best use of the funds).²⁰ Perhaps the RNLI would have preferred not to be associated with this intentionally provocative campaign, not wanting to be seen as politically partisan by appearing to endorse this satirical or spite-based philanthropy. If so, they could certainly have refused the funds and publicly distanced themselves from the campaign. However, giving charities the right to outright *forbid* fundraising efforts – where no malicious intent, deliberate misrepresentation, or other mischief is caused to the charity – may constitute an excessive power to suppress political expression. Of course, within reasonable limits, crowdfunding platforms can stipulate in their terms of service their right to remove campaigns that prove divisive, cause reputational harm, or adversely affect their relationship with key stakeholders (e.g. charities).

¹⁸ Rouleau, P. 2023. Report of the public inquiry into the 2022 public order emergency – Volume 2: Analysis. *Public Order Emergency Commission*. <https://publicorderemergencycommission.ca/files/documents/Final-Report/Vol-2-Report-of-the-Public-Inquiry-into-the-2022-Public-Order-Emergency.pdf>

¹⁹ Butler, P. 2023. 'Regulator vows crackdown on 'squeamish' charities rejecting donations', *The Guardian*. <https://www.theguardian.com/society/2023/nov/09/charities-must-have-good-reason-to-reject-donations-says-head-of-england-regulator>

²⁰ Harris, S. 2021. 'Buy A New RNLI Hovercraft - The Flying Farage'. *GoFundMe*. <https://www.gofundme.com/f/buy-a-new-rnli-hovercraft-called-the-flying-farage>

Finally, Emeritus Professor Myles McGregor-Lowndes (2023²¹) has offered some pragmatic advice on viable paths for regulating online giving:

‘Given that the majority of online giving is serviced by very few online giving platforms, and these span across many jurisdictions, self-regulation through an agreed code of practice or codes facilitated by consumer affairs agencies might well be the most appropriate regulatory tool. Self-regulation on such a global scale is never an easy task (Breen et al, 2016), but the alternative of bespoke regulatory provisions by individual jurisdictions, with little coherence, is doomed to regulatory failure.’

I largely agree and believe there would be *almost* universal in-principle support among crowdfunding platforms for such a proposal. Alas, GiveSendGo are extremely unlikely to compromise on their free speech at all costs stance. If GiveSendGo attain significant traction in Australia any self-regulation efforts may thus prove limited. Still, more prescriptive approaches may even exacerbate a troubling shift towards ‘Alt-Tech’ and a ‘parallel society’, which seeks to evade *any* intervention by the state or ‘Big Tech’.²² For now, however, good faith efforts to collaboratively establish codes of practice for online giving platforms are a worthwhile pursuit.

²¹ McGregor-Lowndes, M. 2023. Fundraising, grantmaking and regulatory issues: regulating good in bad times. pp.109-132 in Williamson, A., Leat, D. & S. Phillips (eds.). 2023. *Philanthropic Response to Disasters: Gifts, Givers and Consequences*, Bristol University Press

²² Wade, M., Baker, S.A. & Walsh, M.J., 2023. Crowdfunding platforms as conduits for ideological struggle and extremism: On the need for greater regulation and digital constitutionalism. *Policy & Internet*.